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UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF SYLVIA RIVERA
IN SUPPORT OF DEFENDANTS
UBER TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S RESPONSE TO
WAYMO'S OFFER OF PROOF**

Judge: Hon. William H. Alsup
Trial Date: February 5, 2018

1 I, Sylvia Rivera, declare as follows:

2 1. I am a partner with the law firm of Morrison & Foerster LLP representing
3 Defendants Uber Technologies, Inc. and Ottomotto LLC in this matter. I am a member in good
4 standing of the Bar of the State of California. I am admitted to practice before this Court. I
5 submit this declaration in support of Defendants Uber Technologies, Inc. and Ottomotto LLC's
6 Response to Waymo's Offer of Proof. I make this declaration based on personal knowledge and
7 if called as a witness, I could and would competently testify to the matters set forth herein.

8 **Uber's Document Production**

9 2. During the supplemental discovery period, Uber responded to 42 document
10 requests from Waymo, produced approximately 7,000 documents, and identified another
11 4,000+ responsive but privileged documents.

12 3. Waymo served 40 document requests at 10:55 p.m. on November 30, 2017. It
13 served an additional two requests on December 8, 2017. Attached hereto as **Exhibits A and B**,
14 respectively, are true and correct copies of Defendants Uber Technologies, Inc. and
15 Ottomotto LLC's Objections and Responses to Waymo's Requests for Production Relating to
16 Issues in Jacobs Letter (Nos. 1-40), served on December 10, 2017, and Defendants Uber
17 Technologies, Inc. and Ottomotto LLC's Objections and Responses to Waymo's Requests for
18 Production Relating to Issues in Jacobs Letter (Nos. 41-42), served on December 12, 2017.

19 4. For the supplemental discovery round, Uber collected documents for more than
20 40 new custodians who previously were not custodians in this litigation. It also performed
21 supplemental collections for certain pre-existing custodians. The custodians for supplemental
22 discovery included at least eight in-house counsel. Uber's counsel reviewed more than
23 135,000 documents for responsiveness.

24 5. On December 4, 2017, Uber produced to Waymo approximately 955 documents in
25 response to the Court's order at the November 28, 2017 evidentiary hearing.

26 6. On December 5, 2017, during a late afternoon meet-and-confer call, the Special
27 Master indicated that Uber should complete its document production in response to Waymo's
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1 supplemental document requests by December 8, three days later. Uber responded that this
2 would not be possible in light of the breadth of Waymo's document requests and the volume of
3 data to be reviewed, but that it understood the Special Master's instruction and would push
4 toward that end goal. Our document review team worked diligently, and Uber made several
5 productions in the days that followed.

6 7. In a subsequent telephonic hearing with Judge Corley on December 13, 2017, I
7 stated that I believed Uber's production would be complete by the following day, December 14.
8 Judge Corley set that as the completion date. By December 14, Uber had produced
9 approximately 4,500 documents and identified over 4,000 privileged documents.

10 8. Waymo asserts that "documents continued to trickle in on December 15, 16, 19,
11 20, 23, 28" (Offer of Proof ("OOP") at 8), but that does not present a fair picture. Working
12 around the clock, on December 15 at 2:07 a.m., Uber produced just 80 documents that were not
13 completed two hours earlier, by December 14 at midnight. Most of these 80 documents involved
14 communications with in-house counsel and were produced with redactions for privilege, which
15 delayed the review and production process. The December 16 production consisted of only
16 13 documents related to MoFo's communications regarding the Jacobs documents, which were
17 produced pursuant to an agreement reached during the December 13 telephonic hearing with
18 Judge Corley. The productions on December 19 and 28 consisted of just two documents that
19 Waymo had only requested from Uber on December 16. On December 20, Uber produced just
20 six documents, which it had only recently identified. Uber did not produce any documents on
21 December 23. It did produce approximately 80 documents on December 21 involving in-house
22 counsel that were provisionally deemed privileged and subsequently voluntarily de-designated or
23 determined to warrant production with redactions. Waymo raised that issue with Judge Corley,
24 who noted that "given the compressed time frame [Uber] had for production it is unsurprising that
25 some documents would have been initially improperly withheld or inconsistently redacted."
26 (Dkt. 2454 at 2.)

27 9. Over the Christmas holiday, e-discovery specialists working on this matter
28 informed us that Uber's document review team was inadvertently provided an incomplete set of

1 results for one of the searches run on in-house counsel emails. On December 29, I informed
2 Waymo of this issue and stated that Uber would thus be making a small supplemental production
3 and would supplement the Padilla privilege log as needed. (OOP Ex. 59.) Uber produced
4 24 documents the next day and on January 11 served the supplemental Padilla privilege log.

5 10. The plurality of documents from Uber's production consists of the documents that
6 Mr. Jacobs had transferred to a thumb drive, or exfiltrated and then returned to Uber—about
7 13,752 pages of mostly calendar entries. The parties had disputed their relevance and
8 responsiveness; on December 20, Judge Corley found they were relevant to whether Mr. Jacobs
9 was being truthful (Dkt. 2415), and Uber produced them on December 22. Excluding that
10 production, nearly 73% of Uber's production was completed by December 8, and over 97% by
11 December 14.

12 **No Knowledge of Jacobs Demand Letter Before November 22, 2017**

13 11. When this Court issued its Notice regarding the Jacobs demand letter on
14 November 22, 2017, I did not have any recollection or knowledge of who Richard Jacobs was,
15 nor had I ever heard of a 37-page demand letter being written by Clayton Halunen, counsel for
16 Mr. Jacobs.

17 12. On subsequent investigation, I learned that on April 26, 2017, at 9:33 p.m., I, along
18 with others, was copied on an email from Eric Tate to Stacey Sprenkel, two of my partners in our
19 San Francisco office. In that email, Mr. Tate provided Ms. Sprenkel with information about
20 contacts at Uber for e-discovery tasks and indicated that I or Wendy Ray, another of our partners,
21 might have additional helpful general information about e-discovery. Mr. Tate's email was a
22 response to the immediately preceding email in the chain, which Ms. Sprenkel sent on
23 April 26, 2017, at 9:10 p.m., and in which she requested information about Uber's e-discovery
24 contacts and protocols. The earlier emails in the email chain consisted of an email from Chuck
25 Duross, one of our partners in the Washington, D.C. office, which had forwarded emails from Joe
26 Spiegler, which included the resignation email from Mr. Jacobs, dated April 14, 2017.

27 13. I further learned, on subsequent investigation, that on April 27, 2017, at 5:55 a.m.,
28 I received an email from Ms. Sprenkel addressed to me and Ms. Ray in response to Mr. Tate's

1 email of April 26, 2017 at 9:33 p.m. In it, Ms. Sprenkel requested additional information about
2 Uber's e-discovery protocols and the personnel at our firm who had experience working with
3 Uber on e-discovery. Ms. Ray replied to Ms. Sprenkel on April 27 at 6:18 a.m. and copied me. I
4 replied on April 27 at 7:00 a.m., Ms. Sprenkel responded seeking further information at 7:03 a.m.,
5 and I replied at 7:05 a.m. Those emails all pertained to Uber's e-discovery resources and
6 personnel.

7 14. I do not recall reading the April 14, 2017 resignation email from Mr. Jacobs on
8 April 26 or April 27, or at any time before the Court issued its November 22, 2017 Notice
9 regarding the Jacobs demand letter. The content of Mr. Jacobs's resignation email was not
10 relevant to the questions that I was being asked by Ms. Sprenkel. Moreover, my work schedule
11 during that time period was extremely heavy. On April 26 and 27, I was busy compiling and
12 analyzing data for my declaration in support of Uber's sur-reply to Waymo's motion for
13 preliminary injunction, drafting and revising my declaration and other submissions in support of
14 Uber's sur-reply, directing Uber's on-going document review and production efforts, working
15 with my team to revise and finalize several privilege logs that were due April 27, and following
16 up on several discovery related meet-and-confer issues Waymo had raised. In addition, on April
17 26, I worked on reply briefs in support of two demurrers and a motion to stay in matters pending
18 in Superior Court in California for two other clients. Given my work schedule and that I was only
19 consulted for information about Uber's e-discovery contacts and protocols, I believe it is highly
20 unlikely that I read Mr. Jacobs's resignation email, which was located at the bottom of an email
21 chain of at least six emails.

22 15. I had no awareness of and did not see the Jacobs demand letter until after this
23 Court issued its November 22, 2017 Notice. Nor was I aware of the mediation and settlement of
24 Mr. Jacobs's claims. I never intended to—and could not have had the intention to—hide Mr.
25 Jacobs's resignation email, the Jacobs demand letter, or the Jacobs mediation and settlement from
26 this Court or from Waymo.

27 **Other Matters**

28 16. Under my supervision, my team reviewed the various privilege logs that Uber had

1 produced in this litigation up through November 22, 2017, to determine if Craig Clark was listed
2 as an author or recipient for any of the documents withheld from production. Mr. Clark did not
3 appear on any of those Uber privilege logs.

4 17. Waymo's Offer of Proof at page 45 references a meet-and-confer email that
5 discusses, among other things, follow up work Uber was doing in June 2017 on an interrogatory
6 regarding Tyto's ownership. (*See* OOP Ex. 92.) The "confidentiality issues" to which I was
7 referring to in that email were issues that Tyto raised that prevented Uber from determining
8 aspects of Tyto's ownership structure, not information that Uber was withholding from Waymo
9 for confidentiality reasons.

10 18. During a meet-and-confer call on December 29, 2017, I confirmed to Waymo that
11 the contents of Nick Gicinto's download from the Next Cloud server used by the security team
12 were included in the scope of Uber's search for responsive documents

13 I declare under penalty of perjury that the foregoing is true and correct. Executed this
14 19th day of January, 2018, in Los Angeles, California.

15
16 /s/ Sylvia Rivera

17 Sylvia Rivera
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ATTESTATION OF E-FILED SIGNATURE

I, Arturo J. González, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Sylvia Rivera has concurred in this filing.

/s/ Arturo J. González

Arturo J. González